



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPLICATION (APL) NO. 635 OF 2023**

Shri Jitendra s/o Babulal Katre,  
Aged about 49 yrs, Occ-Agriculturist,  
R/o Chichgaon, Post. Gankaira,  
Tah. Goregaon, Dist- Gondia.

**APPLICANT**

**Versus**

1. The State of Maharashtra,  
Thr. Police Station Officer, Goregaon  
Police Station, Goregaon,  
Tah. Goregaon and District Gondia.

2. Mr. Manoj Kumar Bajpiya,  
Aged Major, Occ- District Marketing  
Officer,  
R/o Chaudhari Niwas, Shastri Ward,  
Gondia, Tah. and District Gondia..

**NON-APPLICANTS**

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Mr. Amol S. Mardikar, Advocate for the Applicant.  
Mr. A.M. Kadukar, APP for the Non-applicant No.1/State.  
Mr. P.D. Meghe, Advocate for the Non-applicant No.2.  
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**CORAM : URMILA JOSHI PHALKE, J.**

**RESERVED ON : 05<sup>th</sup> MARCH, 2026.**

**PRONOUNCED ON : 12<sup>th</sup> MARCH, 2026.**

**ORAL JUDGMENT :-**

1. Heard.
2. **ADMIT.** Heard finally by the consent of learned Counsel for the respective parties.
3. The present Application is preferred by the Applicant for quashing of the First Information Report (“FIR” for short) in connection with Crime No.75/2023 registered with Police Station Goregaon, District Gondia for the offence punishable under Sections 420, 406, 409 read with Section 34 of the Indian Penal Code (“IPC” for short) and consequent proceeding arising out of the same bearing Charge-sheet No.361/2025.
4. The crime is registered on the basis of a report lodged by the Non-applicant No.2/Manoj Kumar Bajpiya, District Marketing Officer alleging that the present Applicant is the President of Krushi Vikas Sheti Sadhan Samugri and Purawatha Bahuuddeshiya Sanstha Maryadit, Chichgaon who entered into an agreement with Maharashtra Cooperative Marketing Federation Ltd., to collect paddy from the agriculturist. For the season 2021-22 the said Society has

collected total Paddy of 65742.80 quintals. On verification of stock register and record it was found that, there is a difference of 16548.11 quintals in the actual collection, which was actually transferred to the Rice Mills. The Complainant who is the District Marketing Officer has inspected the record and it reveals to him that there is a criminal breach of trust as well as misappropriation of paddy, therefore he lodged the report. On the basis of the said report Police have registered the crime against the present Applicant. During investigation, the Investigating Officer has collected the relevant documents, recorded the relevant statements of witnesses and filed charge-sheet against the present Applicant.

5. Heard learned Counsel for the Applicant, who invited my attention towards the communication filed by the present Applicant with the graders and submitted that, there was an agreement between the Society of the present Applicant and the graders. The graders are appointed to collect the paddy and damage was caused when the paddy was in possession of various graders. Due to the loss caused to the Society, the present Applicant has also preferred Civil Suit bearing

No. 528/2022 in the Court of Cooperative Court, Nagpur against one of the grader namely Meghnath Tejlal Tembhare. The notices were also issued by the present Applicant to the various graders. Thus, he has already taken an action against the graders for the loss caused to the Society. As far as the present Applicant is concerned, there was no entrustment with him or the Society. In fact in view of agreement between the Marketing Federation and the Society, the Society was under obligation to collect the paddy from various agriculturist and to be handed over to various Rice Millers. The Society was also empowered to appoint the graders for that purpose. Accordingly, the Society has appointed the graders. It were the graders who have collected the said paddy and it was kept in the godowns of the said graders. As the graders have not kept the said food grains in a proper condition and the loss was caused, therefore notices were issued by the Society to various graders. In view of that, the entire paddy was entrusted with the various graders and the present Applicant being the President of the Society, has already initiated action against the graders, and therefore, no intention can be attributed to the present

Applicant. In view of that, the Application deserves to be allowed.

6. *Per contra*, learned APP and learned Counsel for the Non-applicant No. 2, strongly opposed the said contention and submitted that, in view of Government Resolution, the responsibility of the present Applicant being the President of the Society to collect the paddy and to keep it in a secured condition and to make all the arrangements to hand over to the Millers without causing any loss to the said food grains. Thus, the paddy was entrusted with the Society of the present Applicant but he has handed over to the graders and loss is caused to the agriculturist as well as to the Government. In view of that, the Application deserves to be rejected.

7. On hearing both the sides and on perusal of the investigation papers, it appears that, in view of Government Resolution dated 30.09.2021 the Scheme was floated for the agriculturist under the name of 'Kiman Aadharboot Kimti Yojna' (Minimum Support Price Scheme-MSP). In view of the said Government Resolution, it was decided to appoint the Nodal

Agency. The Clause 1.6 of the said Government Resolution is reproduced as under:

“१.६ खरेदी झालेले धान ( भात ) खरेदी अभिकर्ता संस्थांनी स्वतःच्या गोदामात किंवा आवश्यकतेनुसार भाड्याच्या गोदामात साठवणूक करून त्याची भरडाई करावी. सदर भाड्याची गोदामे शासकीय गोदामापासून नजीकच्या अंतरावर असतील तसेच साठवणूक व वाहतूक करण्यास योग्य असतील याची खात्री अभिकर्ता संस्थांनी करावी. केंद्र शासनाने ठरविलेल्या विनिर्देशानुसार (उता-यानुसार व इतर अटी व शर्तीनुसार) धान भरडाई करून शासनाच्या /जिल्हाधिका-यांचे निर्देशानुसार तांदूळ शासनाच्या (जिल्हा पुरवठा अधिकारी) यांच्या गोदामात जमा करावा. धान खरेदी केंद्रालगत साठवणूक, खरेदी केंद्र ते भरडाई केंद्रापर्यंतची वाहतूक, सुरक्षितता, भरडाई व तांदूळ शासकीय गोदामात जमा करण्यापर्यंतची संपूर्ण जबाबदारी अभिकर्ता संस्थांची राहिल. पणन हंगाम २०२१-२२ साठीचे विहित विनिर्देश (Uniform Specification) केंद्र शासनाकडून दिनांक २०.०९.२०२१ रोजीच्या पत्रान्वये प्राप्त झालेले आहेत. त्यानुसार पणन हंगाम २०२०-२१ करिता असलेले विनिर्देश पणन हंगाम २०२१-२२ करिता लागू राहतील असे केंद्र शासनाकडून कळविण्यात आले आहे. ”

8. The terms and conditions in view of Government Resolution dated 30.09.2021, especially condition Nos.5.1.3 and 5.1.4, which reads as under:

“५.१.३ कृषी उत्पन्न बाजार समितीच्या अंतर्गत येणा-या क्षेत्रामध्ये असणा-या खरेदी केंद्रांमध्ये खरेदी केंद्रांवर धान्य वाळविणे, स्वच्छ करणे तसेच धान्याची नासधूस होवू न देणे यासाठी व खरेदी प्रक्रिया सुरळीतपणे होण्यासाठी आवश्यक त्या मूलभूत सुविधा (चाळणी, पंखे, ताडपत्री, पॉलिथिन शिट्स वगैरेसारखी आवश्यक साधने, आवश्यक ती वजनमापे आर्द्रता मापक यंत्रे (मॉईश्चर मीटर) बारदाना, सुतळी इत्यादी) कृषी उत्पन्न बाजार समितीमार्फत उपलब्ध करून घेण्याची जबाबदारी दोन्ही खरेदी अभिकर्ता संस्थांची असेल.

५.१.४ खरेदी करावयाच्या धान / भरडधान्याच्या दर्जावर नियंत्रण ठेवण्यासाठी आवश्यक असलेली यंत्रसामुग्री (Image Analysis Kit) व

पुरेसे प्रशिक्षित ग्रेडर्स नेमण्याची संपूर्ण जबाबदारी मार्केटिंग फेडरेशन / आदिवासी विकास महामंडळ यांची राहिल, अशी व्यवस्था केल्याची खात्री संबंधीत जिल्हाधिकारी यांनी करावी. खरेदी अभिकर्त्यांनी एफ.ए.क्यू. दर्जात न बसणा-या धान / भरडधान्याची म्हणजेच / धान, ज्वारी, बाजरी मका व रागी यांची खरेदी केेली तर त्याची संपूर्ण जबाबदारी व येणा-या नुकसानीची जबाबदारी ही सर्वस्वी खरेदी अभिकर्त्यांवर राहिल. कमी दर्जाचे धान / भरडधान्य खरेदी करण्याचा प्रयत्न केल्यास अशा कर्मचा-यांवर / ग्रेडर्सवर अभिकर्ता संस्थांनी दंडात्मक कारवाई करावी.”

9. In view of the said terms and condition, the Agencies which were appointed are under obligations to purchase the food grains to keep it in a proper condition to avoid any loss to the said food grains. The condition 5.1.4 also discloses that, the said Agencies are empowered to appoint the trained graders. It is specifically mentioned that, if any loss is caused to the said food grains which are purchased under the said Scheme, the entire responsibility would be on the Agencies. In view of the said Government Resolution, the District Marketing Officer of the Maharashtra State Cooperative Marketing Federation Ltd., Mumbai entered into an agreement with the present Applicant as a President of Krushi Vikas Sheti Sadhan Samugri and Purawatha Bahuuddeshiya Sanstha Maryadit, Chichgaon for the year 2021-22 by agreement dated 12.11.2021.

**10.** As per the terms and conditions of the said agreement, the Society has to purchase the food grains from various agriculturist. While purchasing the food grains from the agriculturist, the Society is under obligation to verify the 7/12 extract of the agriculturist and the entry on 7/12 extract regarding cultivation of the said food grains and thereafter to purchase the same. It is further agreed that, the Society is under obligation to keep the said food grains in such a condition that no loss should be caused to the agriculturist and supply the same to the various Rice Millers by maintaining the account of the same. Thus, in view of the said agreement, the Society of which the Applicant was the President was appointed as a Nodal Agency to collect the said food grains from various agriculturist.

**11.** The present Applicant being a President of the said Society, in view of Clause 5.1.4 of the Government Resolution dated 30.09.2021, appointed grader namely Sachin Radheshyam Bisen, vide letter dated 21.07.2021. The Resolution passed by the Society is dated 10.11.2021. The Resolution passed by the Society shows that, the Society is having two godowns for the stock of the said food grains but

there is a possibility of having an additional stock, and therefore, the Society has purchased two additional godowns one is from one Meghnath Tembhare and another from Duryodhan Choudhary. Therefore, Meghnath Tejlal Tembhare and Duryodhan Fakir Choudhary were appointed as graders. As per the said Resolution both the graders have obtained training from Sachin Bisen who was also appointed as a grader and thereafter they have to collect the food grains for stock.

**12.** The Resolution further shows that, the graders who purchase the said food grains, would be responsible for any loss if caused from collecting till delivery of the said food grains. It reveals from various statements and the communication on record that the loss was caused to the food grains which are collected by the graders, and therefore, the Applicant being a President of the said Society filed a civil suit against one Meghnath Tejlal Tembhare bearing No. 528/2022.

**13.** The pleading in the said suit shows that defendant therein was appointed as the employee on the post of grader on contract basis by the disputant Society. As per the directions of the District Marketing Officer the farmers nearby and adjoining

to the Center, stored the paddy and at the time of storage of paddy by the farmers, the appointed grader has to measure the weight of the paddy and bound to give the slip to the farmers regarding the measurement / weight of the paddy. The grader thereafter pack the said paddy in Jute bags with the measured weight of 40 Kg per bag. As per the direction given by the District Marketing Officer the grader has to send the said paddies bag of 40 Kg. each to the Miller for processing. The grader has to keep the record of every purchase, measurement and weight in writing regarding the paddy at center and the same has to be submitted to the disputant society as well as the District Marketing Officer. The paddy which has to be given to the Miller for processing is measured in quintals and the quantity has to be given as per the directions given by the District Marketing Officer. As per the notification, the shortage of 1% i.e. 1 kg of paddy is approved for every 1 quintal of paddy. As per the said notification, if the District Marketing Officer found that there is more shortage in weight of delivering the paddy to the rice miller, then the permissible shortage from the center, in that event the District Marketing Officer deduct

the amount from the Society @ 1.5% of the total shortage from the commission of the disputant Society.

**14.** It is further pleaded that, said Meghnath Tembhare was appointed as an employee of the Disputant Society at Katangi Center. He has to measure the weight of the paddy per quintal brought by the farmer at his center and to keep the record of the same. It is also his duty to deliver the paddy to the miller at Center for processing. He was appointed on contract basis. The agreement was executed on 10.12.2021 for the Kharif Harvest and Rabi Harvest for the year 2021-22. In the harvest year 2021-22, the total quantity of paddy was 17413.80 quintals received from the farmers but at the time of delivery to the miller it was delivered only 12318 quintal paddy. Thus, there was total shortage of 5095.80 quintals of paddy at Katangi Center. As per the permissible shortage of 1 Kg., on 1 quintal the total 175 quintal is exempted. Therefore the actual shortage at Katangi Center is 4920.80 quintals. As per the norms of the Maharashtra State Marketing Federation the commission is given to the Disputant Society for taking the paddy from the farmer, storing it, and giving it to the miller for process.

Therefore, the said Maharashtra State Marketing Federation will deduct the amount of shortage from the commission of the Disputant Society and thus malpractice committed by the said Meghnath Tejlal Tembhare and loss is caused to the Society.

**15.** Thus, it reveals that the Marketing Federation entered into an agreement with the Society and the Society has appointed some graders for securing and storing the said food grains. As per the allegation levelled by the prosecution, on inspection of the stock register it was found that there is a difference of 16548.11 quintals in the actual collection, which was actually transferred to the Rice Mills. The Government Resolution by which the Society of which the Applicant was the President was appointed as a Nodal Agency. In view of Clause 5.1.4 though the Nodal Agency was permitted to appoint the graders, however the Government Resolution completely gives the responsibility on the Nodal Agency for any loss caused or for any misappropriation or illegal activity committed while collecting the paddy. During investigation, various statements of the witnesses were recorded. The statements of witnesses also disclose the involvement of the Society and being the President

of the said Society, the responsibility was of the present Applicant.

**16.** In view of the Government Resolution and agreement entered into by the Marketing Federation with the Society, the entire responsibility is owned by the Society and to ease the work of the Society the graders were appointed. In view of Government Resolution though the Society is permitted to appoint the graders but graders should be the trained graders and even if the graders collect the paddy for the Society, it was the Society who is responsible for any loss caused to the food grains collected.

**17.** The recitals of the FIR and the investigation papers show that on verification of the stock register and record it was found that there is a difference of 16548.11 quintals in the actual collection, which was actually transferred to the Rice Mills. The present Application is filed by the Applicant on the ground that, due to election of Zilla Parishad, Gondia he was busy, and therefore, he could not devote time and only the graders are responsible, cannot be acceptable. During investigation it revealed that, approximately there was misappropriation of

3000 quintals paddy for the month of November 2021 and 13,000 quintals in the month of June-July 2022. In view of the Government Resolution and agreement executed between the Board of Directors and the President and other office bearers, who are liable and responsible for the day to day affairs of the Society. The issue involved is the loss to the agriculturist and there is misappropriation of 16,000 quintals paddy worth of Rs.3.21 Crores. Thus, only the loss is not caused to the agriculturist but it was also caused to the Government exchequers and the involvement of the present Applicant reveals.

**18.** While exercising the jurisdiction under Section 482 of the Code of Criminal Procedure, it is well settled that the power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged from the investigation papers.

19. In the case of ***State of Harayana & Ors. Vs. Ch. Bhajan Lal & Ors., 1992 AIR 604***, the Hon'ble Apex Court has laid down the parameters as to the exercise of powers under Section 482 of Cr.P.C., which reads as under:

*“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

20. In view of well settled law as to the quashing of the FIR the facts and circumstances of the present case are to be looked into. Undisputedly, the present Applicant was the President of the said Society. In view of Government Resolution the Marketing Federation has appointed Society as a Nodal Agency to collect the food grains and entire responsibly was of the Society to maintain the record as well as to keep the food grains in a secured condition. The Society has appointed some graders in view of Government Resolution and only the trained graders are to be appointed. There is nothing on record to show that, the graders who are appointed by the Society are the trained graders and they have obtained the training from the trained graders.

21. The investigation papers shows that, there is misappropriation of food grains of approximately 16,000 quintals paddy worth of Rs. 3.21 Crores. Being the President of the Society the present Applicant and the other Board of

Directors are responsible for any loss caused to the said food grains. The various documents collected during the investigation and the statements of witnesses disclose that the food grains are entrusted with the Society and the same were collected through the graders and there is misappropriation of the said food grains. Therefore, the factual position would reveal the involvement of the present Applicant in the alleged offence.

**22.** To constitute the offence punishable under Section 420 of IPC there must be deception i.e. the accused must have deceived someone that by such deception the accused must induce a person to deliver any property or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable property or that the accused must have done so dishonestly.

**23.** To constitute the offence punishable under Section 406 of IPC, the definition of criminal breach of trust is defined in Section 405 of IPC is relevant, which reads as under:

*“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust.”*”

24. The ingredients in order to constitute a criminal breach of trust are:

- (1) There must be entrustment with person for property or dominion over the property, and
- (2) The person entrusted:
  - (a) Dishonestly misappropriated or converted property to his own use, or
  - (b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:
    - (i) Any direction of law prescribing the method in which the trust is discharged; or
    - (ii) Legal contract touching the discharge of trust.

25. Section 408 of IPC is the exhaustive form of the criminal breach of trust. In Sections 406, 408 and 420 of IPC, *mens rea* i.e. intention to defraud or the dishonest intention

must be present, and in the case of cheating it must be there from the very beginning or inception.

26. In the light of the above facts and circumstances of the case as observed the food grains were entrusted with the Society of which the present Applicant was President. He was under duty to secure and also to appoint the trained graders to keep it in the safe custody. On inspection of the record, the Marketing Federation Officer found shortage of stock as per the record and thereafter the report is filed. Huge quantity was misappropriated after it was entrusted with the said Society. Thus, at this stage, *prima facie* case is made out against the present Applicant who was looking day to day business of the Society. In view of that, by applying the parameters laid down by the Hon'ble Apex Court, *prima facie* case is made out and hence, the Application deserves to be rejected. Accordingly, I proceed to pass the following order.

### **ORDER**

- i. Criminal Application is **rejected**.

27. Pending application/s, if any, shall stand disposed of accordingly.

**(URMILA JOSHI PHALKE, J.)**

*S.D.Bhimte*